DOCUMENT RESUME

ED 122 269 CS 202 608

TITLE FOI 75: Report of the Advancement of Freedom of Information Committee.
INSTITUTION Sigma Delta Chi, Chicago, Ill.
PUB DATE 75
NOTE 34p.

EDRS PRICE MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS Broadcast Television; *Censorship; *Constitutional Law; Federal Government; Federal Legislation; *Freedom of Speech; *Journalism; *Mass Media; Press Opinion
IDENTIFIERS *First Amendment

ABSTRACT

This document focuses on freedom of information during 1975. The first section focuses on possible threats to First Amendment freedoms during 1976. The second section focuses on the problems and threats to journalists of S.1, the Senate legislation introduced at the start of the new Congress which aims to revise American criminal law. The third section examines White House press operations under President Ford. The fourth section examines the amendments to the Freedom of Information Law which could curb government secrecy. The fifth section examines three court cases which will have a profound effect on electronic journalism. The final section examines individual confrontation in the states. (TS)

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Report of the Advancement of Freedom of Information Committee
THE SOCIETY OF PROFESSIONAL JOURNALISTS,
SIGMA DELTA CHI

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CS 202 608

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—preface—

Stormy Year Ahead?

The news media digested gains in the national freedom of information field in 1975 and braced itself for expected new battles next year when Congress will consider legislation that could topple jealously guarded First Amendment freedoms.

Also shaping up was the confrontation between reporters' demands for greater access to confidential or secret information and a countermove to erect stronger safeguards around individual privacy. In the end, they could prove a classic confrontation.

The free press-fair trial issue also continued to simmer as judges and attorneys joined media spokesmen in trying to find a common ground between the First Amendment's free press guarantees and the Sixth Amendment's guarantees of a fair trial.

Gil Savery, FOI vice chairman, noted that the media historically have been most concerned about their relationship with the executive and legislative branches, but added: "It may be that the next major lines of battle for press freedom will center around the judicial branch."

On the state front, Savery saw a "mixed market" for the mass media but said that "as the year was drawing to an end, it appeared the freedom of information pluses outnumbered the minuses.

"In state after state, stronger open meeting laws and open record laws were enacted. Further, it was apparent the public could see the value of reporter privilege laws as an important tool for the investigative reporter."

Topping FOI developments in the broadcast area, the FCC ruled 5-to-2 that news conferences of candidates and candidate debates arranged by a person or group other than the broadcaster or candidates are legitimate news events, not subject to the equal time provisions of the Communications Act. The action reversed rulings which dated back to 1962.

When the FCC refused to reconsider, the Democratic National Committee and others appealed the decision in U.S. District Court. If the FCC action stands, 1976 could see a repetition of the 1960 televised Kennedy-Nixon debates. At a minimum, the action would enable networks and individual stations to give candidates more time since equal time would not be required for splinter groups.

Meanwhile, WMCA-AM in New York appealed an FCC ruling that the station violated its personal attack rule by calling Rep. Benjamin S. Rosenthal (D-N.Y.) a coward on a phone-in show. The case is considered significant by Washington attorneys, most of whom think WMCA will prevail with its argument that the rule inhibits coverage.

Resolutions were offered in both the House and Senate to permit their floor debates to be televised. Many congressmen are opposed on grounds the cameras would make "actors" of some lawmakers. Countered Rep. Barbara Jordan (D-Texas): "People should know whether their representatives are on the floor or in the gym."

REPORTERS WERE ENCOURAGED by the first full year of President Ford's White House press operation. There was much greater access to the President and his aides and, according to UPI's Helen Thomas, a "dramatic reversal of the Nixon adminintration's attitude that the press was the enemy."

Trying to live up to his promise of an open administration, Ford had held 18 news conferences as of Oct. 1, mostly televised, and had given an unprecedented 48 interviews.

Press Secretary Ron Nessen also introduced the follow-up question to the news conference, giving reporters a second chance to draw out the President and develop their stories.

BEHIND THE SCENES, freedom of information forces concentrated on S.1, a 799-page bill to revise and recodify American criminal law. (It is expected to pass in one form or another during the Bicentennial year.)

Some provisions enjoy broad support.

But other sections to make conspiracy convictions easier and subject reporters to criminal prosecution if they breach government secrecy have sharply divided Congress and led critics to call it an American version of the British Official Secrets Act.

An original sponsor, Sen. Birch Bayh (D-Ind.), withdrew his support last summer, saying, "I cannot associate myself with a measure that has become a symbol of repression to so many."

Even Sen. Roman Hruska (R-Neb.), co-author of the bill, had second thoughts and seemed willing to apply the proposed law only to disclosure of "critical or vital sensitive information" likely to go to a foreign power.

But critics of the measure feared Congress might succumb to a combination of election-year emotionalism and Bicentennial patriotism and accept a tough bill in an effort to appeal to law-and-order advocates.

FREE PRESS ADVOCATES also zeroed in on a pending bill that would sharply restrict dissemination of criminal records and other justice information by virtually all federal, state and local law enforcement agencies.

The measure would establish detailed regulations under the Privacy Act which went into effect this fall. But opponents argued that the bill would deprive the public of criminal justice information needed to make rational judgments about police and court operations.

ANPA, ASNE, APME and the National Newspaper Association summed up their opposition in a statement later endorsed by SPJ,SDX. It said, "The intention of the bill is laudable: to further the protection of individual privacy. The result is lamentable: the placement of the public's business behind closed doors.

"Under this bill, for instance, a person who has a past record of bribery convictions could be appointed to a city position in which he is responsible for awarding contracts through sealed bids . . . and how about the police chief or prosecutor who use their positions to protect criminals from prosecution because of graft, friendship or other improper reasons? Doesn't the public have the right to know this?"

Reporters likewise remained concerned about far-reaching provisions of the Privacy Act itself. Designed to safeguard privacy, it prohibits access to information collected by federal agencies, without the specific consent of the individual involved.

Responding to media objections, Congress at the last minute exempted records "required" to be made public under the FOI law. But reporters feared officials might interpret the law in such a way as to bar access to information they don't want published.

It also prescribes fines of up to $5,000 for officials who wrongfully disclose such information or for persons who request such information "under false pretenses."

The Reporters Committee for Freedom of the Press quoted a Justice Department lawyer as saying, "It is the worst drafted piece of legislation I have ever seen." Critics will be watching for the next two years a seven-member study commission charged with developing additional measures to protect privacy.

IN ITS FIRST decision upholding an invasion of privacy judgment against the news media, the U.S. Supreme Court reinstated a $60,000 award against the Cleveland *Plain Dealer*'s Sunday magazine in favor of the widow of one of 44 victims of an Ohio river bridge collapse in 1967.

The widow sued for invasion of privacy on grounds that a follow-up story on the disaster contained errors that brought pity and ridicule on her family. A lower court judgment in her favor was set aside by the West Virginia Su-

preme Court. But the U.S. Supreme Court ruled the judgment was "plainly justified."

Justice Potter Stewart, who wrote the decision, ruled on the narrow ground that the trial judge had properly instructed the jury and there was sufficient evidence to support the verdict. But he hinted some high court members favored making it easier for citizens to sue for invasion of privacy.

IN ANOTHER FOI area, Bob Walters, a Washington-based reporter and political analyst, wrote in the *Columbia Journalism Review* that the Justice Department often has failed to follow its own guidelines governing supoenas on newsmen for films, documents or testimony.

He said that "more subpoenas were issued during the first 18 weeks of 1975 than during the previous three and a half years — and some of these were also issued without the Attorney General's approval."

Walters said a Justice Department official, in a memo to Rep. Robert W. Kastenmeier, expressed chagrin over the situation and attributed it mostly to the fact that the U.S. attorneys involved were not familiar with the guidelines. He promised new efforts to prevent further violations.

OTHER FOI DEVELOPMENTS:

Election Commission — After holding its first session in secret, the new Federal Election Commission backed down in the face of protests from SPJ,SDX and others, and since has held public sessions. The protests were reinforced by a warning by Senate Democratic Leader Mike Mansfield that he would seek a legislative remedy if the commission didn't relent.

FOI Irony — Rep. John E. Moss (D-Calif.), an architect of the FOI law, found himself under fire — and quickly surrendered — when he attempted to block eight federal agencies from making public data they had collected in connection with Moss's investigation of their operations. He threw in the towel after reporters seeking the information won an injunction against a subpoena issued by the congressman.

Gag Rules — The American Bar Association studied proposed guidelines aimed at giving reporters a chance to challenge gag orders imposed by the courts. Preliminary comments showed there still is wide disagreement over the best ways to insure the free press guarantees of the First Amendment and the fair trial guarantees of the Sixth Amendment.

Challenge — The House Republican Conference voted 59 to 17 to open its meetings to the public and promptly challenged the Democratic caucus to follow suit. GOP Conference Chairman John B. Anderson, Ill., said it was "even more essential" that the caucus open its meetings because "of its majority status in the House and its ability to dictate policy to committees and their members through binding votes."

Credentials — Nessen modified White House accreditation rules that would have barred many reporters from getting passes. In addition to existing requirements, the policy would have required applicants to represent a "bona fide" news agency and to attend briefings two or three times a week. After a protest by the Professional Relations Committee of the National Press Club, Nessen threw out the "regularity" rule. He said a reporter's bureau chief simply would have to affirm the need for permanent White House credentials.

Visitors — Nessen refused to back down on a practice of not naming all White House visitors on the list distributed to reporters daily. When the reporters protested, Nessen said, "It's the President's preference that some of his meetings are private." When it was learned Ford met privately with several congressmen to discuss military aid to Turkey, Nessen said they believed the session would "turn out to be more productive if it were not announced in advance.

— Grant Dillman

–developments–

In the Legislative Mill

S.1 is not a designation for the Pentagon's latest superbomber. It is a superbomb from Capitol Hill with the explosive potential for leveling First Amendment freedoms jealously guarded for nearly two centuries.

Chances are considered good that it will pass in some form during the Bicentennial year.

S.1, the first Senate legislation introduced at the start of the new Congress last January, seeks in its 799 pages to revise American criminal law, an unprecedented task.

It embodies provisions that have won wide support, such as those to make sentencing more uniform, to compensate innocent victims of violent crimes and to iron out the kinks knitted into the criminal justice system by statute and court decisions over generations.

But some sections — including those to make conspiracy convictions far easier and to make members of the news media subject to felony prosecution if they breach government secrecy — have divided Congress into warring camps.

The first skirmishes will take place in the Senate Judiciary Committee. There, liberal forces — backed by publishing and broadcast groups — will seek to eliminate provisions they contend would amount to an American version of the British Official Secrets Act.

These sections would make it a federal crime:

— For a news organization to obtain or transmit national defense information, including military and intelligence data, either to a foreign power or to anyone not authorized to receive it, knowing that it "may be used to the prejudice of the safety or interest of the United States."

— For a reporter or editor to "mishandle" national defense information by communicating it to any unauthorized person.

— For a present or former government employe to leak classified or defense information to a reporter.

— For anyone to obtain government documents or records for personal use, without proper authorization or to receive such stolen government property.

— For anyone, presumably a reporter, to tamper with government documents or to read private government correspondence without the recipient's permission.

Punishment upon conviction for these crimes would range from a few years in prison for reading a letter up to life for passing military secrets in war time.

Sen. Birch Bayh (D-Ind.), a member of the Judiciary Committee and one of the bill's original sponsors, bowed out last summer, saying he would mount a filibuster if the assault on the First Amendment is not thwarted.

"I cannot associate myself with a measure which has become a symbol of repression to so many . . .," Bayh said. "We are ready to go to the mat on this."

S.1 goes far beyond the existing Espionage Act, which requires the government to prove secrets were obtained "with intent" to harm the United States.

Even Sen. Roman Hruska (R-Neb.), ranking Judiciary Committee Republican and co-author of the bill, is having second thoughts. He now proposes to reinstate the intent-to-harm theory and make the law apply only to disclosure of "critical or vital sensitive information" likely to go to a foreign power.

Senate sources believe such modifications are likely to be made in committee before the bill ever goes to the Sen-

ate floor, possibly late this year. No action is expected in the House, except perhaps preliminary hearings on a companion bill, until the Senate acts.

News organizations have showered the McClellan committee with objections claiming the unconstitutionality of S.1. They contend it would let the government hide behind a forest of classification stamps and thwart federal employes from blowing the whistle when appropriate on misdeeds of superiors.

"Whenever in the past great issues have arisen in Washington, there always have been those in government willing to risk their careers to give the public what they deemed to be the truth," Grant Dillman, chairman of the SPJ,SDX Freedom of Information Committee, testified on a similar bill last year.

The bill grew out of a 12-man commission named in 1966 by President Lyndon Johnson and chaired by former California Gov. Edmund G. Brown to recommend an overhaul of the nation's criminal laws.

The Brown commission's 1970 report laid down the basic structural reform now in the bill — but also recommended abolition of the death penalty, a ban on private ownership of handguns and decriminalization of marijuana. Those provisions were wiped out in a later Nixon administration version, which also wrote in the harsh secrecy sections.

Those two bills are now meshed in S.1. The judiciary subcommittee on criminal law, also chaired by McClellan and more conservative than liberal, has had a long first crack at it and made few changes. The major efforts to amend it are expected to come in the full committee, which is more liberal, and later on the Senate floor from the Bayh bloc.

ONE OF BAYH'S allies is Sen. Edward M. Kennedy (D-Mass.), co-sponsor of a bill that would shield reporters from having to disclose their sources to government agencies and courts.

10 The bill did not budge and Kennedy did not re-submit it. Instead, he is pushing a "whistle-blower's special" that would forbid disciplinary action against federal employes who disclose information releasable under the Freedom of Information Act or information given to members of Congress on request.

SPJ,SDX testified in favor of the Kennedy bill in April. "Intimidation is intimidation whether it takes the form of a threat to send someone to jail or a threat to his future career prospects by transfer, demotion or outright dismissal . . .," said Alan Emory, who spoke as president of the Washington, D.C., chapter and the FOI Committee.

Shield Legislation

Shield legislation has fallen by the wayside in this Congress, perhaps due to the building furor over S.1. There are no bills pending in the Senate and action is considered improbable on any of the five introduced in the House.

The most likely candidate there, however, is H.R. 215, sponsored by Rep. Robert Kastenmeier (D-Wis.) and identical to one he submitted last year.

It would require a reporter to reveal a source only at a trial in federal or state courts and only then if the judge is convinced the information is indispensable, it cannot be obtained any other way and there is "a compelling and overriding public interest" involved.

But reporters and editors are split over the need for, and constitutionality of, shield laws. And members of Congress are reluctant to act in the absence of unanimity on the part of those most affected.

The Justice Department opposes the Kastenmeier bill, contending that it would block law enforcement officials from obtaining needed evidence for a grand jury.

That poses a question: Should the government be free to obtain information from the press to expose and prosecute actions of citizens — while at the same time prosecuting the press for exposing questionable actions of the government?

It boils down to who should be shielded from what.

— *Jane Denison*

The Farr Case

Reporter William Farr faced another jail sentence for refusing to reveal his news sources, unless the U.S. Supreme Court intervened.

Farr's troubles began in 1971 when he was covering the Charles Manson murder trial for the Los Angeles *Herald-Examiner* and wrote that the Manson "family" planned to kill other Hollywood celebrities.

Farr conceded to Superior Judge Charles Older, who had issued a gag order applying to all witnesses before, during and after their testimony, that two of six attorneys in the case had given him a transcript containing the information.

But when the judge insisted that he name the attorneys so they could be punished for contempt, Farr refused. Farr served 46 days in jail before contempt of court charges were vacated by Superior Court Judge Raymond Choate after two attorneys were indicted for perjury for denying that they had furnished Farr with the transcripts.

The Ninth Circuit Court of Appeals in San Francisco then reversed that ruling and Farr announced he would carry the case to the U.S. Supreme Court.

— *Grant Dillman*

And Judicial Orders

Judges and attorneys at the American Bar Association meeting in Montreal considered proposed guidelines to give reporters a chance to challenge court-imposed gag orders. The meeting indicated that there is still a wide gap between the media and many judges and attorneys.

The aim of the ABA is to ease conflicts between free press guarantees of the First Amendment and fair trial guarantees of the Sixth Amendment. A study was initiated in 1974 by the ABA's committee on fair trial and free press in cooperation with the Reporters Committee for Freedom of the Press after it appeared some courts might have exceeded ABA standards in their efforts to insure a fair trial.

The guidelines would apply to trials likely to result in widespread publicity. They would provide for the court to issue, prior to the trial, special guidelines covering pre-trial and trial publicity so reporters, attorneys and other interested parties would have a chance to respond.

The draft said that while "restrictive orders are generally undesirable and should be limited to those occasions when they are absolutely necessary . . . many restrictive orders across the country, in both state and federal courts, have been entered without notice and without hearing.

"In some instances, these orders have been issued on the eve of trials, or invoked orally during the trial. Generally, no one has appeared before the court to assert the free press right in the First Amendment."

North Carolina Superior Court Judge James H. Bailey said the proposed preliminary orders would be useless and urged instead that each state set up a committee of judges, attorneys and media representatives to develop trial coverage guidelines.

Bailey was "more vehement" in insisting that judges should have the final say. Granting prior notice also would give the media the right to appeal, he said, and he opposed giving reporters legal footing in such matters. Several other judges took similar stands.

On the other hand, the Atlanta chapter of SPJ,SDX argued for safeguards against arbitrary judicial actions, stating "there exists in the nation's courts an ugly streak of authoritarianism in the form of the judicial gag order."

Its solution included more judicial control over attorneys, prosecutors and witnesses, barring trial participants from discussing such matters as confessions and results of lie detector tests, and establishing physical restrictions on the press, if necessary, to preserve court decorum.

A second session to consider the proposed ABA guidelines was scheduled in Washington in October.

— *Grant Dillman*

—at the white house—

A Dramatic Reversal

White House press operations under President Ford have been encouraging. There is far greater accessibility to the President and his aides and a dramatic reversal of the Nixon administration's attitude that the press was the enemy.

Ford has tried to live up to his promise of an open administration by holding more news conferences and conducting an unprecedented number of personal interviews. In addition, he has talked freely to local reporters in his travels around the country, holding many regional television interviews.

He has held 18 news conferences as of Oct. 1, 1974, mostly televised and mostly in Washington, and has given 48 interviews to individual reporters or groups representing various newspapers and television networks. By contrast, former President Richard M. Nixon averaged seven news conferences a year.

When he resigned in August of 1974, Nixon had held only three news conferences that year, the last one in March. Nixon interviews were almost non-existent.

Ford's interview technique had two important results. It gave his views widest possible publicity. And since transcripts were made available generally for simultaneous use with publication of the interview, there was no feeling on the part of White House regulars that they were being "scooped" or discriminated against.

Also on the positive side, Press Secretary Ron Nessen introduced the follow-up question to the Presidential news conference. It drew general acclaim because it gave the reporter a second chance if he felt the Chief Executive's answer was unresponsive or incomplete.

This resulted in less of a scatter-gun approach and reduced frustrations on the part of reporters. It also introduced a new sense of calmness to the news conference, which became so hostile under Nixon that it produced a public backfire against the media.

Nixon once said he would hold news conferences when he believed they were in the public interest. Ford, on the other hand, seems to genuinely enjoy the give-and-take and is willing to stand accountable.

NESSEN, THE SECOND of Ford's presidential press secretaries, had a hard act to follow. His predecessor, Jerry terHorst (a veteran reporter who quit as press secretary because he was not informed of Ford's decision to pardon Nixon), established a fresh, new tone in the wake of Ronald Ziegler's credibility gap.

White House reporters also felt under the gun at the start of the Ford administration because outsiders had broken the Watergate story. But terHorst was a professional journalist who understood the need to restore confidence in White House press operation.

When Nessen was appointed, he announced he was "a Ron but not a Ziegler" and pledged never knowingly to lie to reporters. Nevertheless, he went through a testing period in which reporters insisted that he prove his sincerity with deeds rather than words.

He got off to an uneasy start, partially because reporters, once burned, were determined not to let it happen again. In addition, Nessen's style was abrasive to some reporters who felt he was too glib, that he was not straightforward and that he was putting the President on a pedestal.

Finally, an angered Nessen accused reporters of calling him a liar and having a blind mistrust of anything he said. The result was some soul-searching on

both sides. Nessen apparently took to heart criticism that he was too sensitive. Most reporters concluded they shared the blame for the vitriolic atmosphere.

The result was a more relaxed and informative Nessen, although he still tried to finesse some questions reporters considered important and gave others shades of meaning that did not always square with the facts.

One such incident followed two assassination attempts against Ford. Nessen insisted to reporters that Ford contemplated no changes in his travel plans. He specifically disagreed with Senate GOP Leader Hugh Scott that there would be a hiatus in the President's heavy travel schedule.

The next day Nessen said that there probably would be fewer trips in the fall than originally thought. When asked about the change, he said, "I know more today than I knew yesterday." He still insisted, however, that Ford had made no changes in his plans.

Still later, Ford told television interviewers in Los Angeles that he might call Nixon while he was in California. For two days, Nessen insisted Ford had no time for such calls. Finally, 20 hours after the fact, he conceded Ford actually had phoned the former President.

Access to other White House sources started out fairly free but eventually tightened up. One factor might have been Ford's dislike of "leaks."

The press operation also improved when William Greener was brought in from the budget office to act as Nessen's chief deputy. A professional information officer, Greener has kept an open door and been very cooperative in helping reporters with their problems.

THE PRESS WON a partial victory in a protracted battle to cover late afternoon and early evening receptions held by the President. Despite his pledge of an open administration, Ford, immediately upon taking office, banned reporters from receptions for VIP visitors.

After months of futile protests to Nessen, a letter of protest was sent directly to Ford by the White House Correspondents' Association, the National Press Club, the Washington Press Club and The Society of Professional Journalists, Sigma Delta Chi. Ford relented and agreed to admit a small pool of reporters to such functions.

The assassination attempts against President Ford resulted in a sharp curtailment in advance information about his activities and thereby increased the problem of planning news coverage of his trips.

They also have increased the awareness of White House reporters generally that they share in the minute-to-minute coverage previously provided mainly by the wire services.

The first attempt against Ford's life in Sacramento produced an atmosphere of tension among reporters and officials alike and the Secret Service acted to tighten up its protection of the President. But there was no halt in the flow of advance information about Ford's schedule until the second attempt in San Francisco. At that point, Press Secretary Ron Nessen said there would be no more advance announcements of Ford's travel plans until they were firm, leaving would-be assailants less time to make plans.

The practical effect is that reporters will have to be more flexible.

THE FIRST LADY, Betty Ford, has been her own best press secretary. Outspoken and candid, she takes reporters in stride. While she has held only one formal news conference, she is willing to answer questions at White House parties and on other occasions at which media members are present.

Her press secretary, Sheila Weidenfeld, a former TV producer, does not always seem to understand the problems confronting newspapers, including the necessity for obtaining precise details. And she sometimes seems to consider herself a shield for the First Lady.

THE REAL TEST of Ford's press operation probably is still ahead. One problem facing Nessen's operation will be its ability to draw a line next year between Ford the President and Ford the Candidate. He must define Ford's problems for the press and public without becoming his political press agent.

— *Helen Thomas*

–foia–

The Bite on Secrecy

FOI: One Year Later

When Congress put new teeth in the Freedom of Information Law, over President Ford's veto, most of the talk was about how it would curb government secrecy. But it also produced a flood of requests from private citizens, most of them demanding to see their FBI or CIA dossiers.

Some officials, whose agencies are working overtime to comply with the requests, say the law has created an administrative nightmare. The FBI has reassigned more than 100 employes to help handle the requests. The CIA has assigned approximately 50.

On the other hand, Ralph Nader, columnist Jack Anderson and others who use the act say the bureaucrats have invented devious new ways to circumvent the law, including charging prohibitively high fees for processing and reproducing such information.

But both sides agreed in interviews with UPI that while generating new controversy, the amendments also served to curb government secrecy, the intent of the original Freedom of Information Act passed in 1966.

Ford vetoed the amendments on grounds they were "unconstitutional and unworkable" and would pose a threat to legitimate military and intelligence secrets. But Congress overrode his veto last November and the new law went into effect in February.

It narrowed the number and scope of exemptions that protected national security data and certain other categories of information from public disclosure.

It also required federal agencies to answer information requests within 10 days, broadened avenues of appeal when requests were denied, set up penalties for violation of the law and gave the courts authority to declassify secret documents in disputed cases.

Since then, requests for government records have poured in from students researching term papers, businessmen interested in trade secrets, lawyers ferreting out evidence, scholars, convicts, assassination buffs and, of course reporters.

An FBI spokesman, James Farrington, said the bureau received nearly 8,700 FOI requests from Jan. 1 through the end of August, with "roughly 95 per cent . . . coming from individuals [including prisoners] asking what information the FBI has on them."

The CIA received 7,361 information requests from Jan. 1 through Sept. 25, most of them also asking what the intelligence agency "has on me, my mother, the company I work for, and so forth."

A district court put heavy pressure on the FBI by ordering the agency to provide the sons of Julius and Ethel Rosenberg all appropriate material on their parents' spy case by Oct. 15 and to be prepared to defend any deletions by Nov. 15. The FBI assigned 80 of its 152 FOI employes to the task.

As a result, Farrington said, the FBI, with 3,783 FOI requests on hand at the end of September, was processing only 1,131. He said the agency was writing petitioners that their requests would be handled in chronological order.

The law allows agencies to charge only "reasonable standard fees" to search out and duplicate the information without regard for time spent in reviewing and censoring it. The CIA and FBI charge $4 an hour if the search involves a clerk and $8 if it in-

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volves a higher official. Duplicating is 10 cents a page.

Columnist Anderson, who contends the government has no right to charge anything for such information, said the Justice Department was "going to charge us around $50 or $60 per fact" when he was digging into the travel records of former Atty. Gen. William Saxbe.

"If you added up all the facts we wanted, that would amount to a pretty big sum," he said. "I think they gave us that figure as a deterrent."

Robert L. Saloschin, a Justice Department official specializing in FOI matters, counters that "the amount collected in fees is a drop in the bucket compared with the amount it's costing the taxpayer to process these requests.

"There may be isolated cases where the processing fee has been excessive, but when somebody asks for something that takes hundreds or thousands of man-hours, he shouldn't be surprised when the charge runs into the hundreds or thousands of dollars."

One CIA source, while decrying the administrative load of the new law, said it may have an unintended side benefit by discouraging agents from stamping "secret" on harmless documents. He cited a flying saucer buff who asked if the agency ever had investigated unidentified flying objects (UFOs).

The official checked and found a 25-year-old report still labeled secret which concluded that UFOs were not a threat to national security.

"I declassified it right on the spot and sent it to him with the compliments of the agency," he said. "I just took a red pencil and crossed out the word 'secret'."

— *David Nagy*

A Touch of Irony

16 Rep. John E. Moss (D-Calif.), an architect of the Freedom of Information Act, found himself under fire when he attempted to stop eight federal agencies from making public data he had requested about their operations.

The agencies compiled the material at Moss's request in his capacity as chairman of the House Oversight and Investigations Committee, which had been looking into their policies and performance.

However, when *Product Safety Letter* (a newsletter) and the Washington *Star* sought the data under the newly-strengthened Freedom of Information Act, the congressman subpoenaed all the material.

Working with the Reporters Committee for Freedom of the Press, the newsletter won a restraining order from U.S. District Court preventing the agencies from complying with the subpoena. *Television Digest* filed a similar suit. Both argued that the FOI law requires the government to make available within 10 days all but specifically exempted or classified data.

U.S. District Judge William D. Bryant ordered the agencies not to comply with Moss's order "because we believe the subpoena may be unlawful." He also said the agencies did not have to comply with FOI requests until the case would be settled by the courts.

Moss, who had said he merely was trying to prevent premature release of possibly damaging material, called the court order a "judicial intrusion into the constitutional prerogatives of Congress" and said the judge had failed to take into account "the co-equal status of Congress."

But he said he would not press the issue at least for the time being.

He said he was notifying the agency heads that they were released from the subpoena and was "urging them to respond positively to all requests for non-sensitive material under the Freedom of Information Act consistent with statutory law."

Involved were the Food and Drug Administration, Federal Trade Commission, Environmental Protection Agency, National Highway Traffic Safety Administration, Federal Communications Commission, Interstate Commerce Commission and the Securities & Exchange Commission.

— *Grant Dillman*

A Shut-Open Case

After holding its first session in secret, the new Federal Election Commission quickly backed down in the face of protests from SPJ,SDX and Senate Democratic Leader Mike Mansfield, who threatened to seek a legislative remedy.

The commission voted 4-to-2 to close a meeting at which it considered whether the major parties could accept free services from cities hosting the 1976 national party conventions. (It decided they could.)

Chairman Thomas B. Curtis, one of the two members opposing the action, said it would "be interpreted for what it is. This commission doesn't want to act in the sunshine."

In a letter to Curtis, the Society contended that closing the session was "contrary to good policy, contrary to the intent of Congress and contrary to the public interest." It added a hope that Congress would force the commission to open its hearings unless it reversed itself voluntarily.

Mansfield immediately issued a statement saying he had intended to condemn closed meetings in a letter to Curtis but had decided that a public statement would be more effective.

Curtis, in turn, wrote the Society that the commission majority voted to close the meeting because "of unique circumstances unlikely to be repeated." Because members had not had the customary three days to consider various draft opinions, he said, they decided to meet in private, "free of the restrictions imposed by the presence of attorneys for potential litigants and without premature publicity."

He pledged that the Commission's policy of holding open meetings unless a majority rules otherwise "will continue and that any departures will, as here, be as narrowly drawn as possible. . . . [The] commission remains committed to adding a maximum amount of 'sunshine' into commission proceedings."

Subsequent meetings of the commission were open to reporters.

—decisions—

On the Electronic Front

September 1974 to September 1975, the year after Watergate, saw three court cases which will have a profound and lasting effect on electronic journalism. And it was the first year of President Ford's "open" administration.

The three court cases grew out of Federal Communications Commission decisions. Perhaps the most important occurred when the FCC, in a 5-2 nonpartisan vote, listed exemptions to the equal time provisions of the Communications Act. It said debates between candidates, when arranged and under the control of a group other than the broadcast licensee or the candidates, and news conferences by candidates were "bona fide news events" and thus not subject to the equal time provision.

Within a week, the FCC denied petitions to reconsider its decision, stating: "It would be a gross misuse of our adjudicatory function to apply purposefully what we are now convinced is an error of law. That we did so for 13 years without knowledge of our error is of no moment."

The Democratic National Committee and the National Organization of Women have appealed the FCC decision and the Washington, D.C. Court of Appeals has promised an expedited hearing.

Broadcasters won a major fairness case this summer when the Washington, D.C. Appeals Court finally wrote "finish" to the case involving the NBC documentary "Pensions: The Broken Promise." The FCC had ruled that the documentary violated the Fairness Doctrine. NBC appealed, and in December 1974, a three-judge panel ruled in favor of the network, saying the FCC had only limited power in reviewing licensee judgments in fairness matters.

Accuracy in Media, Inc. (AIM) sought, and received, an en banc rehearing by the appeals court. In July, the full court vacated the previous ruling and remanded the case to the commission to vacate its order and to dismiss the AIM complaint. The panel's original 2-1 opinion, which found in favor of NBC, remains on the record and can be cited as a judicial statement supporting the discretionary rights of broadcasters in dealing with Fairness Doctrine matters.

The third case involved an alleged violation of the FCC's personal attack rules when a WMCA (AM) New York talk show host called a new congressman a "coward" on the air. WMCA has appealed the FCC ruling in a case considered of major significance by Washington communications lawyers. WMCA's brief notes that the Supreme Court, in the Red Lion decision upholding the FCC's Fairness Doctrine and personal attack rules, "expressly left open" the possibility that personal attack rules should be abolished if "in actual administration they inhibited coverage . . ." This is exactly what has happened, WMCA argues.

In another case, the FCC ruled that Georgia radio stations WIYN Rome and WPLK Rockmart (both owned by L. E. Gradick Jr.) violated personal attack rules and the Fairness Doctrine in several instances. The stations were given only a one-year license renewal (the normal period is three years) and ordered to file statements describing internal procedures to be implemented to assure compliance with the rules.

The first year of President Ford's "open" administration saw the advent of the regional presidential news conferences. Administration officials were extremely happy with the way the first of the conferences with Ford — in Providence, Omaha and San Francisco

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— turned out. Despite the protests from the print media, there are certain to be more of these conferences.

DURING THE Watergate era, ex-President Richard Nixon had said the broadcast licensees of the Washington *Post* were in "damnable trouble" when they applied for renewal. The *Post* received challenges to two of its stations: WJXT Jacksonville and WPLG Miami.

WPLG received one competing application which challenged the "character qualifications" of Washington *Post* Publisher Katherine Graham. The FCC refused to consider that charge in November 1974 and two weeks later the challenger, Tropical Broadcasting Co., withdrew its application.

WJXT received three competing applications, two of which fell by the wayside early. The *Post* went to hearing with St. Johns TV Co., following which FCC Administrative Law Judge Forest McClenning ruled that St. Johns had not filed "in good faith."

"THE PEOPLE should know whether their representatives are on the job or in the gym," Rep. Barbara Jordan (D-Texas) said, advocating regular TV-radio coverage of Senate and House floor proceedings. Despite much hope during congressional reorganization last January, resolutions in the Rules Committees of both houses made very little progress. The Senate resolution has 32 co-sponsors. A similar resolution has been introduced in the House, where it appears to be opposed by the House leadership on the grounds of cost. Many other members of Congress oppose TV coverage because so few sessions are attended by more than a handful of legislators and because TV would make "actors" of some congressmen. "But it's coming . . . it's just a matter of time," a ranking member of House Commerce Committee (which has jurisdiction over TV-radio) said.

ALSO MAKING ITS slow way through the courts is a major broadcast obscenity test. In October 1973, WBAI (FM) in New York City aired a George Carlin monologue about "words you'll never hear on television." In February 1975, the FCC ruled the language used was "indecent and prohibited by federal law," carefully making a distinction between "indecent" and "obscene." The commission also said the album contained "filthy language" and that any child could have tuned into "that garbage." WBAI appealed, claiming that if the order stands, stations will be prohibited from broadcasting the uncensored works of Shakespeare and Bible passages — not to mention the Watergate tapes, if they ever are made available for broadcast.

The commission's press release identified the "indecent" words. UPI reported the words; the networks, AP, New York *Times*, Washington *Post* and Washington *Star* did not.

THE SAGA OF the networks and Justice Department antitrust charges continued through the last year. In November 1974, Los Angeles Federal District Judge Robert Kelleher dismissed a Justice Department suit against the three major TV networks "without prejudice," meaning it could be refiled — a step the government took a month later.

The suit seeks to prohibit the networks from engaging in the production or ownership of prime-time programming except news and documentaries. The networks claim the suit (originally filed in 1972) was politically motivated by the Nixon administration for the purpose of "harassing, intimidating and inhibiting them in the exercise of First Amendment rights." A prime issue is the attempt by the networks to gain access to the Nixon Watergate tapes and documents.

ACCURACY IN MEDIA, Inc. came in a poor second in stockholder fights against CBS and RCA-NBC management. AIM had asked CBS stockholders to require the network to establish a "corporate responsibility committee" to probe charges of liberal bias in CBS news coverage. AIM received 2.6 per cent of CBS shareholders' votes.

In a similar move at the RCA stockholders' meeting, AIM sought to require NBC to employ an ombudsman to "review NBC's performance in public affairs programming with a view to insuring fairness and balance, as well

as strict accuracy." The move received 5.2 per cent of the RCA votes which means it can be resubmitted next year. (SEC requires that such a resolution must receive 3 per cent of the votes to be reintroduced the next year.)

DIVERSITY IN MASS media was the reason cited by the FCC in ordering split of seven TV-newspaper combinations in the same market and nine radio-newspaper combinations. All of the divestitures were ordered in one-station-one-newspaper markets and the FCC also prohibited the acquisition of future broadcast-newspaper combinations in any market. In the case of a sale of existing combines, the newspaper and broadcast station(s) must be sold to separate owners. The FCC has ordered a hearing on the purchase of the Washington *Star*-WMAL-AM-FM-TV by Joseph Allbritton, who had sought a waiver of the rule.

Within one hour of the FCC order last January, court appeals were made by parties on both sides of the issue — some claiming divestiture didn't go far enough, others claiming there is no need for any kind of rule

AND:

— Memphis Judge William Williams denied a CBS request to inspect and test ballistics evidence from the trial of James Earl Ray for the murder of Martin Luther King Jr.

— Sen. William Proxmire (D-Wis.) is actively pushing for repeal of the broadcast Fairness Doctrine, a move given no chance because of the aggressive opposition of Sen. John Pastore (D-R.I.), the chairman of the Senate Communications Subcommittee. Ironically, Proxmire was the principal advocate of a 1959 amendment to the Communications Act which added the FCC's fairness rule to Sec. 315 of the Act.

— In Buffalo, N. Y., Federal Judge John Curtin ruled that TV cameras would be allowed in the court room to cover a school desegration case. He later rescinded the order because of a Judicial Conference prohibition. Said the judge: "It seems to me that it would have been a good community service."

— CBS-TV started a furor and national debate over "checkbook journalism" when it agreed to pay ex-Nixon aide H. R. Haldeman for an interview. NBC and ABC — and most other reporters and government bureaucrats who commented — criticized the action. CBS News President Richard Salant later said the payment probably was a mistake.

— New Hampshire broadcasters won a significant FOI victory when the legislature passed a bill guaranteeing the right to use tape recorders at open meetings. Several public bodies had banned recordings, citing a 1973 state Supreme Court ruling that there is no unrestrained right to gather news.

— In what could have been an historic first, the Senate on June 9 passed a resolution permitting televised coverage of floor debate over the disputed New Hampshire senate seat. However, several senators who had not been present for the vote protested that the action was too hasty and the resolution was never implemented. The vote was the first to permit TV coverage of regular senate proceedings — although TV cameras have been allowed in for special occasions, such as the swearing in of Vice President Nelson Rockefeller.

— The Minnesota Legislature, which permitted KTCA-TV (an educational station) to cover its proceedings in 1975, probably will kick the cameras out next year on the grounds that TV coverage caused "grandstanding" and turned chambers into "a theatre." "You have TV cameras all over the place," complained Senate Majority Leader Nicholas Coleman. "The lights are irritating . . . The speeches get a little longer."

— The FCC refused to renew the licenses of Alabama's nine state-owned educational TV stations because, the commission ruled, the stations discriminated against blacks in employment and programming from 1967-70. However, the agency permitted the state to reapply for the channels, which it has done. Competing applications for licenses of three of the stations were filed by Alabama Citizens for Responsive Public TV.

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— Dawson (Tack) Nail

–in the states–

Individual Confrontation

The mass media were dealing in a mixed market in 1975, but as the year was drawing to an end it appeared the freedom of information pluses outnumbered the minuses in the states and locally.

Consumerism, often given a substantial boost by the media, focused on the news product itself. Not the least of the concerns on the state and local level was the issue of the credibility of the press. And some news consumers were highly critical of media performance while others were singing praises of their use of the First Amendment.

But if it was true that the public sometimes was disenchanted with media performance, this disenchantment was not reflected in legislative action.

In state after state stronger open meetings and open records laws were enacted. Further, it was apparent the public was seeing the value of reporter privilege laws.

Whether termed a reporter's shield or reporter's privilege, these measures constitute news source protection. Added strength comes if a pledge of confidentiality extended by a reporter is supported by force of law. Lacking this sort of protection, potential sources, particularly in sensitive investigative news reporting, are sometimes unwilling to undergo the risks of physical, economic or political reprisal.

THE REFINEMENT of open meetings laws did not mean that everything was moving just as the media would like. As a matter of fact, there were often differences of opinion as to where the line should be drawn when any unit of government was dealing with such matters as personnel, pending litigation, acquisition of real estate and labor negotiations. These are most often exempted under open meetings statutes.

But, increasingly, the national trend has been to extend the open meetings concept to state and local governments, often including committees or advisory groups where the hard struggles of democracy are fought and the decision-making process is most vital. And in some instances this has opened meetings to the public when previously only the press had been permitted. This in turn strengthened open government and made the media less vulnerable to criticism that they seek privileges for themselves alone.

As a generality, state legislatures are more protective of their own functions than those of the administrative branch. And some legislatures have been more liberal in opening local government than they have their own committees.

IN THE OPEN RECORDS field the general trend is toward easier access. But as units of government move toward computerization of data previously available in "hard copy" from files, problems of access are being complicated. Access to computerized material can be more difficult than retrieval from a record book or a file folder. News organizations nationwide should be alert to the need for legislation to keep channels open for information retrieval from computerized storage.

ELECTRONIC AND print media dealt with the continuing questions relating to confidentiality of news sources, prior restraints on publication and distribution, privacy and libel, freedom of information, free press-fair trial, antitrust, access to the media and codes of ethics.

The indivisibility of the First Amendment won new emphasis as the high school and collegiate press gained support in the courts. Often these issues

reflected different tastes. School administrators argued for greater control to maintain standards befitting their schools. Student editors, on the other hand, sometimes pushed their use of freedom to the limits, resulting in embarrassment to school administrators.

THE FREE PRESS-FAIR trial issue in the states was by no means quiescent. In many states bar-media conferees agreed on pretrial guidelines. While these are helpful, and perhaps signal a closer understanding among the bar, courts and media, the interpretation of the guidelines as they relate to specific cases remains a sticky problem and is not likely to be fully resolved.

Historically the news media have been more concerned about their relationship to the administrative and legislative branches of government. No more. It may be that the next major lines of battle for press freedom will center around the judicial branch of government.

State courts in some instances, apparently taking their cue from the U.S. Supreme Court's refusal to review criminal contempt decisions against two New Orleans reporters, are placing gag orders on the media. In the New Orleans case a federal judge ordered the media not to publicize or print any news about criminal proceedings in open court. When the reporters violated that order they were found in contempt. A circuit court of appeals found the lower court's order invalid, illegal and void, but held that it had to be obeyed until overturned. The Supreme Court refused to review that finding. Extended, that concept constitutes a form of prior restraint.

Encouraged by the high court's inaction in this matter, judges in lower courts around the country were applying gag orders with greater frequency.

Similarly there were moves to close preliminary hearings. It is argued they are not trials. The media, on the other hand, believe the preliminary hearing is a vital part of the judicial process—a most vital part in which it is determined whether an accused shall or shall not stand trial. Reporters and their managements appear to be ready to challenge gag orders and prior restraint.

Many an editor is having to turn to legal counsel more often than any time ever before in his or her working life. He or she seeks counsel on libel, open records, open meetings, privilege and numerous problems on which the editor must rely to decide the best courses of action.

Evidence of these wide-ranging concerns in the states is shown by the increased activity in the freedom of information field by media organizations including the American Newspaper Publishers Association; National Association of Broadcasters; Associated Press Managing Editors; National Press Club; American Society of Newspaper Editors; The Society of Professional Journalists, Sigma Delta Chi; Women in Communications; the Freedom of Information Center; the National Newspaper Association, and a potent relative newcomer, the Reporters Committee for Freedom of the Press.

The accompanying state-by-state reports, prepared with the editorial assistance of reporters Jana Miller and Nancy Newhouse, constitute only tips of icebergs in a sea of media problems. Many court cases or situations dealt with are highly complex so the reader is referred to the more detailed accounts obtainable from the Freedom of Information Center or the Reporters Committee.

— Gilbert M. Savery

Affairs of the States

ALABAMA

The Mobile SPJ,SDX chapter adopted a resolution urging the passage of a Sunshine Law being considered by the Alabama Legislature in the interest of "the people's right to know and freedom of information."

The law would require all meetings of public agencies to be open to the public. The present Alabama open meetings law "is vague to the point of being ineffective," the resolution said.

The proposed law would clarify what constitutes a public meeting and what

procedure is to be followed in calling a meeting. At present, notice that a meeting will be held is not required.

Newsmen in Alabama say violations of the present public meetings law are frequent, particularly at the county and city level, because of a provision permitting executive sessions when a person's "good character" is being discussed. Some Alabama newsmen predicted the sunshine bill would not pass in the 1975 legislative session.

Citing the First Amendment, an Alabama judge ruled that complaint reports of the Mountain Brook police department must be open to inspection by the news media.

Judge Thomas E. Huey Jr., saying that he was not persuaded that the state open meetings law covered police complaint reports, based his decision instead on the First Amendment. First Amendment rights also extend "to the gathering of the news," Judge Huey said. Complaint reports "are made by public employes and contain information of interest to the public generally," he said.

A set of proposed canons of ethics for Alabama judges which was submitted to the Alabama Supreme Court in January received a strong round of objections from newsmen. The section under fire would prohibit "broadcasting, televising, recording or taking photographs in the courtroom, and areas immediately adjacent thereto during sessions of court or recesses."

United Press International urged Chief Justice Howell Hoeflin of the State Supreme Court to drop this section from the canons, saying it "would limit First Amendment rights by limiting a news medium representative's right to gather information, photographs, films and tape recordings for news stories."

Among those who filed objections to the news coverage section of the proposed canons were the Birmingham and Mobile SPJ,SDX chapters, the Alabama Press Association, the Alabama Broadcasters Association, the Alabama Press Photographers Association, and other professional groups and individual newspapers.

The Mobile SPJ,SDX chapter attacked Mobile County School System policies in a strongly worded position paper. The policies at issue have been criticized by newsmen for the last two years, but no efforts to revise them have been taken by the school board.

The chapter said many policies of the school system violate fundamental constitutional rights, such as freedom of the press, freedom of speech and freedom of expression. They said some of the policies are workable as a matter of courtesy between school officials and journalists on a normal, day-to-day basis, but could represent an unconstitutional form of prior restraint or censorship of the press in certain situations such as school disturbances.

Passages which SPJ SDX urged the board to delete or revise included:

—Public Information Program: "The program shall include attempts to assure freedom of the press within the bounds of sound educational policy . . ." (SPJ,SDX objected to "attempts" and "within the bounds of sound education policy.")

—News Releases: "Written materials produced by students under the supervision of their teachers and released to the mass media shall have the prior approval of the principal or by a person officially designated by the principal . . . Photographs taken in a local school for use by the mass media shall have the prior approval of the principal." (SPJ,SDX said these paragraphs violated the Constitution and common law copyright.)

—News conferences and interviews: "Board members shall not, either incidentally or by design, hold conferences or engage in conversation with mass media representatives as a basis for reporting to the general public. Neither shall individual board members furnish prepared written statements to mass media representatives as a basis for reporting to the public. All written statements reflecting the views of board members, individually or collectively, shall be approved by a majority of the board prior to release."

—Interviews with students: "Interviews with students, teachers and other local school employes on school cam-

puses sponsored and conducted by the mass media shall have the prior approval of the principal. Interviews held with students on school campuses shall be observed by a professional member of the local school staff except as otherwise approved by the principal."

—Visitors to the schools: "All persons not assigned to a school shall report directly to the office when visiting in a school. Principals in the local schools shall develop and disseminate procedures governing individuals visiting in schools."

ALASKA

The Ketchikan *Daily News* won a court judgment overturning a borough school board's refusal to release the results of a study conducted by the board. Superior Court Judge Thomas Schulz's ruling upheld the newspaper's claim that the study was part of the school board's records and covered by a state law allowing public inspection.

Schulz also rejected a claim by the school board that information in the report should remain confidential in part due to a 1972 state constitutional amendment which protects an individual's right to privacy. He said the board had failed to show how the public interest would be harmed by releasing the report.

ARIZONA

For the most part, Arizona enjoys wide-open government. An open meetings law was passed in 1962 and has been strengthened twice since then. The state's open records law was toughened this year. Attempts at legislating shield laws have been made in the past two years, but proposals have not gotten off the ground because of media apathy. Newsmen in Arizona express a satisfaction with their current state of affairs, and an inbred fear of letting legislators define "who we are and what we do," as one Phoenix *Gazette* reporter described it.

ARKANSAS

The *Arkansas Gazette* is appealing to the state Supreme Court a ruling by a Little Rock judge that meetings of the Student Affairs Committee of the University of Arkansas Board of Trustees are not required to be open to the public.

Judge Tom F. Digby had ruled that committees of public bodies do not fall under the state open meetings statute. Attorneys for the *Gazette* concede that the law does not define committee meetings as public meetings which must be open, but say that any interpretation of the law so narrow as to exclude committees is erroneous and in violation of the intent of the state legislature in passing the law.

The Arkansas Supreme Court ruled this year that meetings of committees of public bodies are covered by the Freedom of Information Law. In 1974 this court ruled that the only public records required to be open to inspection are those required to be kept by law.

CALIFORNIA

In California, attention centered on four Fresno *Bee* newsmen (pictured on p. 22 with the judge) who were found in contempt a total of 73 times for refusing to answer questions about their source for stories on a bribery case. They claimed immunity from revealing their sources under the California Newsmen's Shield Law and the California and the United States constitutions.

Three articles by reporters William Patterson and Joe Rosato touched off the conflict. The articles dealt with secret grand jury testimony which led to the bribery-conspiracy indictments of a Fresno city councilman and two others.

California's 5th District Court of Appeal upheld 55 of the contempt citations against the newsmen. The court said the reporter's privilege does not hold when it conflicts with the constitutional duties and powers of the court or interferes with a criminal defendant's right to a fair trial.

The California shield law states that an editor or reporter cannot be adjudged in contempt by anyone with the power to issue subpoenas for refusing

to disclose sources of information. The appellate court qualified that, saying: "The shield law still remains as a protection against the revelation of all sources other than court officers . . ."

The *Bee* plans to appeal the decision to the state Supreme Court.

In another issue, Los Angeles Mayor Tom Bradley vetoed an ordinance that would have banned coin-operated vending machines, including newsracks, from public sidewalks. He said the measure violated freedom of the press, and added that he would work with the California Newspaper Publishers Association for regulation of the racks without infringing on the freedom of the press.

In a four-year-old issue, newsman William Farr, who had been scheduled to go to jail again for refusing to reveal a source, was granted a stay pending an appeal to the U.S. Supreme Court. He faced five days in jail and a $500 fine on a contempt citation. He previously served 46 days of an indefinite sentence until he was ordered released by Supreme Court Justice William Douglas. (See "The Farr Case," p. 11.)

The electronic media also became involved in freedom of information issues as Radio Station KPFK-FM in Los Angeles gave a grand jury an original tape recorded message allegedly from kidnap victim Patricia Hearst. The station also turned over a communique from the New World Liberation Front regarding two bombings.

Will Lewis, the station's manager, spent 16 days in jail after refusing to turn over the Hearst tape. He appealed the contempt citation but the U.S. Supreme Court declined to hear the case. Lewis said it would be a waste of time and money to take the second case to the high court.

The Reporters Committee for Freedom of the Press said it was disappointed by the Supreme Court action, adding that it threatens all newsmen.

In another matter, Station KPFK and three professional journalism organizations, including the Los Angeles chapter of The Society of Professional Journalists, Sigma Delta Chi, filed suit. The suit challenged the constitutionality of police searches at the station, which could have revealed identities of confidential sources.

In other developments, the state Senate passed legislation to open more governmental meetings and records. And the Los Angeles County Superior Court opened juvenile criminal hearings. The youths, however, still cannot, by law, be identified.

CONNECTICUT

State open government laws were extended to the local level by major new freedom of information legislation passed unanimously by the Connecticut General Assembly.

The law establishes a three-member Freedom of Information Commission which will be charged with adjudicating disputes between the government and the public or the press. Also included is a possible $1,000 fine and a year in jail which can be levied against a government employe who, among other things, destroys records without authorization.

Exempted from disclosure are personnel records, tax returns, some law enforcement information, including juvenile arrest records, engineering estimates, real estate appraisals and personal information on license applications.

The meetings of a public agency which may be closed by a two-thirds vote of the members are those dealing with discussion of personnel matters, strategy and negotiations with regard to pending claims or litigation, security and public acquisitions where early publicity might increase the price. The new law permits agencies to withhold preliminary drafts and notes where they determine such withholding to be in the public interest.

Gilbert N. Kelman, former publisher of the Wallingford *Post*, was ordered to reveal his sources for a 1972 article about a reputed underworld figure who was about to open a greyhound racing track in the community.

Kelman said, "The First Amendment

guarantees [my rights as a journalist], and acceeding to this order would weaken the fabric of a free press."

U. S. District Court Judge M. Joseph Blumenfeld's order came in a reversal of an earlier decision in the same case. The subject of Kelman's article, Boston philanthropist Joseph N. Linsey, had brought a $5 million libel suit against the *Post* and sought the names of the two persons quoted—but not identified—in Kelman's article.

Kelman said he will appeal the decision, and is being aided by the Reporters Committee for Freedom of the Press.

Judge Blumenfeld's decision relied upon the U.S. Supreme Court finding last year in *Gertz v. Welch*. There, the Supreme Court revised the law of libel to make it easier for a nonpublic official or nonpublic figure to recover damages in a libel action. Blumenfeld found that this decision removes the publisher's privilege against nondisclosure of confidential sources in this case.

DELAWARE

Delaware has no clear open meetings or records laws. The state does have a patchwork of statutes, mostly from common law, which require some meetings to be open to the public—but no broad, definitive law exists.

A number of freedom of information bills were introduced into the state's General Assembly this year, but none was voted on. This push for open meetings and records laws was prompted in part by an incident involving the state Public Service Commission, which approved a statewide electricity rate increase without announcing the meeting to the public.

FLORIDA

The U. S. Supreme Court overthrew a Florida law compelling newspapers to provide free reply space to politicians they have criticized.

28 The case involved the Miami *Herald*, taken to court by a candidate for Florida's legislature who invoked the 1913 reply law which had been largely ignored by the press. Mississippi was the only other state with a "right of reply" law.

A lower court declared the law unconstitutional, but the Florida Supreme Court upheld it in a 6-1 decision. The court reasoned that the public's right to know both sides of an issue was being hampered by concentrated ownership of the mass media, resulting in "a form of private censorship."

A decision from U.S. District Court Judge Charles R. Scott has strengthened the ability of reporters to protect in civil cases their resource material as well as their confidential sources. Scott's ruling came in a case in which Palatka, Fla., lawyer Alan Fields had filed suit against County Constable Thomas Loadholtz alleging that Loadholtz had violated the civil rights of Fields's clients. Loadholtz filed a countersuit charging that Fields's claims had been filed in bad faith.

Palatka *Daily News* reporter Clarence Prevatt had interviewed Fields and written a story. Loadholtz had Prevatt subpoenaed in an effort to obtain the reporter's notes on the interview.

Judge Scott refused to order Prevatt to comply, finding that the "unrestricted flow of public information protected by the First Amendment" was the overriding interest.

Scott also held that "the compelled production of a reporter's resource materials is equally as invidious as the compelled disclosure of his confidential informants."

A Florida appeals court freed St. Petersburg *Times* reporter Lucy Ware Morgan from beginning a five-month jail sentence imposed when she refused to reveal the source for her story on a secret report of a local grand jury. The court, not mentioning freedom of the press considerations, found that Morgan's publication of the story was not a crime under any Florida law. A second contempt citation carrying a 90-day jail term was being reviewed by the same court.

A March decision by the 2nd District Court of Appeals in Florida prevented the Fort Myers *News Press* from gaining access to personnel files of county department heads.

The *News Press* initiated the action after a meeting of the Lee County Board of County Commissioners at which the board failed to order the firing of an unnamed county department head.

Circuit Judge Thomas Shands issued a writ of mandamus compelling the county to open its personnel records to the newspaper. The appellate court found that there were no statutes in Florida's open records laws specifically exempting personnel records from disclosure, and turned to the common law. The court held that disclosure of employe personnel files would "make a mockery" of the right of privacy because much of the information contained in employes' personnel files is furnished under at least an assumption of confidentiality. The court dismissed any argument that public employes waive some of their right to privacy by working for the government.

Gore Newspapers Co., publisher of the Fort Lauderdale *News* and *Sun-Sentinel*, filed suit against Sheriff Edward J. Stack and his chief administrator, alleging the two men violated the constitutional rights of *Sun-Sentinel* reporter Grant Stephenson and a prisoner in the county jail.

The company petitioned the circuit court for a temporary and permanent injunction against the policy imposed by Stack which has forbidden Stephenson from interviewing Richard Croll, a prisoner in the jail.

Croll, a co-plaintiff in the suit, was arrested Dec. 24 on information issued by the state's attorney which charged him with conspiracy to commit murder. Stephenson was told he could interview the prisoner, with the consent of Croll and his attorney.

According to the suit, administrator Bernard J. Lenahan refused to permit the interview. The suit charges that Croll was being denied his constitutional rights of freedom of speech and right to equal protection under the law.

Gore Newspapers Co. also filed suit to prevent a Broward Circuit Court judge from barring the press and public from divorce hearings involving Jackie Gleason.

The suit, filed in the 4th District Court of Appeals, charges Judge Robert W. Tyson Jr. "acted without jurisdiction and in excess of ar[illegible]udicial authority" when he closed a earlier hearing. Tyson is charged with violating rights of freedom of speech and press.

Attorneys for Gore Newspapers Co. said a trial judge only has the authority to close to the public and the press court hearings on bastardy, juvenile delinquencies and adoptions.

U.S. District Court Judge C. Clyde Atkins in Miami upheld a local ordinance which grants individuals the right to review copies of investigative reports of their credit ratings.

A Florida shield law was introduced in the 1975 legislative session, but did not make it out of committee.

GEORGIA

Georgia has had an open meetings law since 1972, but it is considered weak. No immediate proposals are being considered to strengthen it. For about a decade, Georgia has had an open records statute. News source protection legislation has been proposed, but it has never made it out of committee.

HAWAII

Bills have been introduced in the Hawaii legislature which would place stringent regulations on circulation, advertising and profits of Honolulu's leading daily newspapers, the *Star-Bulletin* and *Advertiser*.

A state senator introduced a proposal for governmental audits of circulation and advertising rates, saying that "the rate of return on newspapers is more than should be allowed." Rates would be regulated to prevent "excessive profits.

Last year the state attorney general ruled unconstitutional a similar proposal by Honolulu Mayor Frank Fasi.

John A. Scott, publisher of the Honolulu *Star-Bulletin*, condemned the proposals, saying "the freedom and integrity of the press are . . . at stake."

IDAHO

Idaho's open records law was enacted in 1887. In 1974 the *Idaho Statesman* in Boise entered a lawsuit to gain access to the records of a state board entrusted with the investment of public school endowment funds. The *Statesman* is presently under a court-imposed news gag in connection with a murder trial.

ILLINOIS

Larry Spohn, a reporter for the *Metro-East Journal* of East St. Louis was subpoenaed by the defense to testify at a pretrial hearing in connection with defense allegations that the government had sponsored or encouraged newspaper publicity in a case.

Spohn had conducted interviews with a key government informant in a federal grand jury investigation of kickbacks on public contracts. Because of concern for the informant's life, publication of detailed articles on his activities were delayed until his name was publicly revealed in a federal court hearing. By that time, six East St. Louis school district officials had been indicted on kickback charges.

Several defendants filed motions seeking a dismissal or continuance on the grounds of massive pretrial publicity.

Spohn testified after the judge agreed to what he termed "reasonable" conditions imposed on the reporter's testimony by his lawyers. Illinois has had a news source protection statute since 1971. It was agreed that Spohn would not testify about any confidential matters, but only about published information and on whether the government had encouraged news coverage of the case.

Spohn testified he never asked the government for permission to interview the informant and that the government did not know about the interviews.

The U. S. attorney corroborated that testimony and said he could not tell the press what to do. The judge denied all the pretrial publicity motions.

Two newspapers in Rockford, Ill., were faced with the unusual situation of being sued for libel and told by the judge conducting the trial that the papers could not editorialize on the case while it was in litigation.

The Rockford *Morning Star* and the *Register-Republic*, both owned by Gannett, were sued for $300,000 by Chief Deputy Circuit Clerk Fred Cooper, who alleged that the papers libeled him in November 1974.

Circuit Judge James Eyles imposed his restrictions on the papers at the beginning of the trial. Attorneys for the papers appealed to the 2nd District Appellate Court seeking a reversal. The papers have continued to carry news coverage of the proceedings.

Illinois has had an open meetings and open records law since 1957. In 1961, the legislature passed a bill to open local government records.

INDIANA

Two reporters from the Indianapolis *Star* were indicted by a Marion County grand jury as a result of their investigation of police corruption. William E. Anderson and Richard E. Cady were charged in September 1974, with conspiracy to bribe a police officer. The reporters convinced the court to destroy their indictments and arrest records in June 1975.

They had been accused of conspiring with a burglar and police informant by observing him offer a police lieutenant a bribe.

The Freedom of Information Committees of both the Associated Press Managing Editors Association and the American Society of Newspaper Editors investigated the indictments.

The executive committee of the national Reporters Committee for Freedom of the Press asked Atty. Gen. William Saxbe for a federal inquiry because "it would appear that Marion County prosecution officials are abusing the state criminal justice process in an attempt to intimidate these reporters."

Cady and Anderson maintained that the informant approached them with the idea of having them observe the bribery to demonstrate "how easy" it was. The reporters said they watched him hand over the money "as a matter of curiosity."

The reporters were part of a four-member team which had been investigating police corruption and abuses for some seven months, and had written some stories on the subject.

An Indiana high school journalism teacher who was fired after a publications controversy received $200 from the legal fund of SPJ,SDX and $100 from a new scholastic press freedom fund of the Journalism Education Association.

The controversy arose from publication in the high school newspaper of a five-part series on the problems of premarital sex among students. The teacher, Jean T. Lentczner, refused to allow censorship by the school board, but agreed to have student editors work with school administrators on the series. Lentczner was asked to resign after publication of the second part of the series. She refused, and was subsequently dismissed.

Newsmen in Indiana say questions frequently arise about what constitutes a public record in the state. Such questions have been settled by negotiation, and when necessary, court action.

IOWA

Iowa's open meetings law permits a public body to close its meeting on a two-thirds vote for exceptional reasons so compelling as to override the general public policy in favor of public meetings. The result has been that some agencies have closed meetings for virtually any reason.

A bill to close the loophole passed the Iowa Senate this year, but stalled in the Iowa House.

Small-town editors in Iowa report they are regarded as unwanted spectators at meetings, and frequently attempts are made to keep them out of meetings through use of "executive sessions." However, Iowa's open meetings law has no provision for such executive sessions.

KANSAS

A bill which strengthens the Kansas open meetings law was passed in the 1975 legislative session.

Designed to eliminate abuses and augment the open meetings law passed in 1972, the new legislation makes it illegal to adjourn a meeting to another time or place in order to circumvent open meetings requirements. The original law permitted public agencies and bodies to go into private executive session for discussion purposes.

In addition, the legislation requires that date, time and place of regular public meetings and an agenda of proposed business be provided to anyone requesting the information.

The *University Daily Kansan* of Kansas University at Lawrence reports it has experienced some difficulty in obtaining information on meetings held on the university campus.

The Kansas attorney general's office held in 1974 that Kansas open meetings laws do not apply to certain committee meetings of the university.

The Kansas University SPJ,SDX chapter is directing an effort to redress flaws in the Kansas open meetings law.

KENTUCKY

An open meetings law was passed last year, and progress is being made on legislating an open records law.

Kentucky newsmen say their open meetings law is the second best in the nation. The law was the result of a lobbying effort from Common Cause, the League of Women Voters, the Kentucky Press Association, and the Louisville SPJ,SDX chapter. The press has won all open meetings contests since the law went into effect.

Although the state does not have an open records law, newsmen say a decision from the Kentucky Court of Appeals broadened access to public records. The Louisville SPJ,SDX chapter and other interested agencies are monitoring the effect of this decision to determine whether additional legislation is needed.

Kentucky's legislature had passed an open records bill in 1974, but the act was vetoed by former Gov. Wendell Ford.

A present bill, which has been ap-

proved in subcommittee, lists specific exemptions, including all inter- or intra-agency memoranda in which final decisions are neither made nor discussed. Investigative files and intelligence data would also be exempt as "essential to effective law enforcement or the protection of a person's right to privacy."

The law specifically defines which records must be open, among which are final records on all actions taken by public agencies.

Although the Kentucky open meetings law applies to interim committees of the state legislature, such panels may meet in closed session when discussing personnel matters, the attorney general's office said.

The Legislative Research Commission requested the opinion, asking if the state open meetings law permitted secret investigations by an interim committee into charges of criminal malfeasance by state officials.

Kentucky has a free press-fair trial compact drawn up with the Kentucky Bar Association. There have been efforts by some judges to impose the gag rule, but newsmen have won all of the court cases.

The Somerset *Commonwealth-Journal* began a fight which could lead to a change in a U.S. Labor Department regulation prohibiting the disclosure of the names of participants in a federally-funded public service employment program. In January 1975, Pulaski County Judge Jacob V. Garner refused to release to the *Commonwealth-Journal* the names of some 40 people he had appointed to jobs under the program.

Kentucky Gov. Julian Carroll said he will investigate Garner's refusal.

LOUISIANA

Newsmen in Louisiana report the biggest problem with freedom of information is defining the public meetings act, to bring about full compliance by public bodies. Newsmen say they hope to do this through the courts, rather than going to the state legislature.

"We are reluctant to take this route [legislation] because our past experiences have indicated we might lose more than we gain," said one of the state's reporters, Larry L. Dickinson.

MICHIGAN

A decision by the Michigan Supreme Court may provide a basis on which to obtain juvenile criminal records.

The case involved an insurance company's request to see the court records in a juvenile case, to identify the juveniles and their parents. The statute in question bars access to court records except by order of the court. Police had denied an earlier insurance company request to see police records so the company chose to try to open the court records in the juvenile case.

MINNESOTA

Minnesota has one of the strongest open meeting laws in the nation, but newsmen in the state have begun wondering how long they can keep the law intact.

Common Cause of Minnesota has joined with public-official groups seeking legislative approval of exceptions to the Minnesota Open Meetings Law.

Public-official groups who had been unsuccessful in lobbying efforts went to the state legislature in 1974 with amendments that would have permitted public bodies to hold closed meetings on strategy for salary negotiations with employes, pending litigation, the proposed acquisition of land and charges against public employes.

MISSISSIPPI

The state enacted an open meetings law in 1975, but it is viewed as weak. It provides for secret sessions on a three-fifths vote of public bodies. The state has an open records law, but no news source protection statute.

Legislators are quick to close meetings, one newsman reports, and it sometimes takes an order from the attorney general to gain access to records.

MISSOURI

Declaring that the purpose of the

state's open meeting law is "that secrecy be prohibited at all levels of government in the state," the Supreme Court ruled unanimously for the media and public access.

St. Louis Mayor John Poelker had challenged the law, arguing that the city's board of estimate and apportionment was excluded from its provisions. He said the board was not created by state law, but by city charter and therefore was not a public body.

The St. Louis *Post-Dispatch*, proceeding under the Freedom of Information Act, filed suit against the Federal Bureau of Investigation with the demand that it be given access to files on the newspaper's Washington bureau and on its chief Washington correspondent, Richard Dudman.

The suit grew out of disclosure that the FBI had secretly subpoenaed long distance telephone records of the bureau and its chief since 1971. FBI Director Clarence M. Kelley said the files contained information developed "during coverage of matters within our investigative responsibilities in the internal security field."

MONTANA

The legislature passed a freedom of information measure, but exercising his power under Montana law, Gov. Thomas L. Judge reduced its effectiveness. The legislature's language provided that any citizen who had to sue the government to obtain access to public hearings or documents "shall be awarded his costs and reasonable attorneys' fees." Gov. Judge changed "shall" to "may." He argued that some denials for access are made because of error and that the state should not be penalized in such instances.

The state has had an open meetings statute since 1963, an open records law since 1895 and a news source protection law since 1943, which was later amended to include radio and television. The press opposed a provision of the 1972 constitution which reads, "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of the state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

NEBRASKA

Nebraska had a fairly strong open meetings law for a number of years. But the 1975 legislature enacted a new measure supplanting earlier statutes and resulting in a flurry of activity.

The new measure is a modified version of the Common Cause bill which is being pushed in a number of states. The University of Nebraska Board of Regents first ran afoul of the new law when it met with Athletic Director Bob Devaney prior to the announced time of its meeting. The state attorney general tossed the problem to the Lancaster County attorney. He did not prosecute the board because, he said, the regents had not willfully violated the new statute.

More confusion came with regard to the legislature. Replying to a question raised by a senator as to whether the new law applied to the legislature, the attorney general's office ruled that it would—at least when the legislature breaks up into committees.

The state constitution says, "The doors of the legislature and the Committees of the Whole shall be open, unless when business shall be such as ought to be kept secret."

The new law says, "Every meeting of a public body shall be open to the public . . . except as otherwise provided by the Constitution of the State of Nebraska, federal statutes and this act."

Currently legislative rules authorize committees to go into executive session for no stated reason. Reporters can remain in such sessions and quote anything said. But the public is excluded. So there appears to be a conflict between the open meetings law, its interpretation as set against constitutional provisions, and certain rules of the legislature. The matter is likely to get early attention in the legislature, which holds annual sessions.

Another complicated matter arises in connection with computerized data

kept by private firms and government agencies. A committee of the legislature has decided to draft new legislation dealing with public access to government records and protection of individual privacy. This issue has been a major concern and will most certainly be dealt with in the 1976 session.

In 1973 Nebraska enacted an unqualified news source protection measure, one of the strongest in the nation. Thus far its provisions have not been tested.

NEVADA

The state's open meetings law withstood its first judicial test when a district judge ruled the law "should be construed liberally in favor of the public."

Judge John Gabrielli's decision was prompted by a suit brought by the *Nevada State Journal* and Reno *Evening Gazette* against the Reno City Council to prevent its conducting private meetings to negotiate a new contract with three airlines serving Reno International Airport. Judge Gabrielli ordered the meetings to be conducted only if the public and press were allowed to be present.

The state has had an open meetings law since 1960 and an open records law since 1911. In 1971 a news source protection bill was passed and in 1975 it was amended to include former newspersons.

NEW JERSEY

The New Jersey legislature enacted a new open meetings law. The sunshine measure, however, bars newsmen from meetings on personnel matters, land acquisition and labor negotiations. The state has had an open records statute since 1963.

A news source protection bill has been on the books since 1960, but it carries a provision that apparently voids the newsperson's immunity if he "talks about" a case rather than simply writing about it.

The appellate division of the Supreme Court has limited access to advisory opinions in ethics cases under the state's right-to-know law. A member of the General Assembly had requested release of advisory opinions in specific cases, but the court denied his request. The court also said there was no "showing of personal or special interest, including hardship or prejudice" to justify access under common law.

NEW MEXICO

New Mexico enacted a strong open meetings law in 1974, repealing earlier statutes adopted in 1953 and 1959. Several attempts were made during the 1975 session to change the law, but the legislature adjourned without amending it.

NEW YORK

A New York State Supreme Court justice backed the rights of news reporters to protect their sources by quashing a subpoena against New York *News* writer Thomas Raftery. The judge ruled that a reporter's information was privileged, protected by both the First Amendment and New York's Civil Rights Law.

Raftery was subpoenaed by lawyers for Henry Marahan, and his son Henry Jr., both of whom had been arrested in 1974 on charges of illegal possession of weapons. An article printed in the *News* indicated the arrests were the result of an "anonymous telephone tip." The subpoena against Raftery was intended to get the reporter to disclose who in the Police Department had told him of the so-called tip.

The justice argued that since Raftery had not witnessed the commission of a crime he had no lawful duty as a citizen to testify.

A citizen committee has sought revisions in the New York Sunshine Law. The group is headed by Elie Abel, dean of the Columbia University Graduate School of Journalism.

Among the proposals of the Committee on Public Access to Records is a plan to list in the law what records are not available to the public. All others would be presumed public. The current

law defines only what kinds of records are to be open. Other changes include a requirement that appeals be made directly to the courts and that officials involved in withholding information prove that a document is not public.

Common Cause made New York a major target for action in 1975 because, it says, New York government is "one of the most secretive, unresponsive, and oligarchical in the nation."

Legislative leaders dispute Common Cause's evaluation. But Jack Conway, Common Cause president, cited secret committee proceedings, the ability of top legislative leaders to control the flow of legislation to cast votes on behalf of absent colleagues, and the use of the pocket veto with regular and routine concurrence of legislative leadership.

Criminal contempt of court charges against the Niagara *Gazette* and three of its employes were dropped in a case involving the publication of material contained in a sealed grand jury report.

The court said there had been no proof that indicated the *Gazette* had been covered by a previous order to return all copies of the report which had been "sealed forever."

A federal judge ruled that officials of a Long Island high school had no right to seize copies of a student paper containing a supplement on contraception, abortion and other sexual matters.

The four-page supplement was included in an issue of the *Paper Lion*, student publication at Farmingdale High School.

Judge Mark Costantino ruled in Brooklyn Federal Court that the seizure constituted "interference with student speech" and infringed on the students' First and Fourteenth amendment rights. He rejected the argument of school officials that the supplement was part of school curriculum and thus interfered with the officials' authority.

NORTH CAROLINA

Since becoming effective in 1971, North Carolina's open meetings statute has received at least seven tests.

The editor of the Gastonia *Gazette*, Darrell Williams, filed suit to prevent the city council from meeting in secret executive session with the city attorney to discuss a $36,000 invoice from the assistant city attorney for past services.

The mayor told the council, according to the council minutes, that "since this is a lawyer-client relationship it should be discussed further in executive session."

The *Gazette*'s suit followed. On the day of the planned meeting, Judge Kenneth A. Griffin decided not to grant the newspaper's request for an injunction.

The judge included in his ruling a bar against the mayor's or council members' discussing with anyone any matters dealt with in the executive session. He later reversed that portion of the order. The central issue remained unresolved.

OHIO

An Ohio court ruled that highway patrol data relating to the incidence of injuries and fatalities at higher speeds did not constitute material covered by the Ohio Public Records Act. The material had been cited during a hearing to increase the speed limit for trucks from 55 to 60 miles per hour.

Overdrive, a trucking industry magazine, filed suit to obtain the data, but the highway patrol refused on the grounds that the study was confidential. A state judge dismissed the suit after the patrol argued the magazine failed to show the patrol had a "clear legal duty" to turn over the study. The judge indicated that the suit could be refiled under a different legal theory, but *Overdrive* decided against incurring the financial burden of another lawsuit.

Legislation was also introduced to strengthen the state's open meetings statute. Gov. James A. Rhodes signed into law Ohio Senate Bill 74, commonly known as the Sunshine Bill. It was designed to erase executive sessions from government on the state and local levels.

The measure excludes party caucuses, consideration of land purchases in which price boosts might result, and other specific items. The FOI commit-

tee of the Central Ohio chapter of SPJ,SDX strongly endorsed the bill. The measure became effective in November 1975.

The statute includes the stipulation that any citizen who finds such a private session, may be granted an injunction against the offending agency. Any action taken after such a session is void and persistent violations can result in removal from office of the violator.

Another major FOI step came through adoption of voluntary regulations allowing filming and recording of hearings before the Public Utilities Commission.

OKLAHOMA

A news source protection measure was enacted during the 1974 legislative session as Oklahoma joined a growing list of states providing privilege to newspeople.

Oklahoma has had an open meetings law since 1959, an open records statute since 1943.

OREGON

The Oregon Legislature had passed House Bill 2579 in the last days of its session to limit access to criminal histories of individuals, without noticing that it didn't contain an important section. The bill failed to make the exception that made arrest records public. The governor made it law Sept. 13.

Asked for a ruling, the state attorney general said the law would prohibit release of arrest records by police agencies or the courts. The Oregon Newspaper Publishers Association voted to seek a court order striking down the law after the governor declined to call a special session of the legislature. The governor, however, changed his mind. The legislature repealed the law Sept. 16. But for four days, nearly every police agency had complied with it.

An expanded open meeting law emerged from the 1975 session of the legislature, thus adding strength to freedom of information bills enacted in 1973. The 1973 legislature enacted a new open records law and a news source protection measure.

PENNSYLVANIA

Newsmen and the public in Pennsylvania are benefiting from the state's new Sunshine Law enacted in 1974. It applies to all state and municipal public bodies. In the legislature, all standing committee and conference committee meetings are open for the first time.

The Pennsylvania State University Board of Trustees held its first open meeting the day the governor signed the act. The open meetings statute, in its original form, was drawn up by the Pennsylvania Newspaper Publishers Association. Its provisions were later broadened.

Pennsylvania has had a news source protection statute since 1936, believed to be the first such state law, and an open records law since 1957.

Reporter John Scotzin, who covers the capitol, reports no major access problems. But, he says, occasionally local situations come to light in which an open meeting is purposely held in recess all day to wear out a reporter's patience and circumvent edition demands. Then officials take executive actions when no one is present.

Late in 1974, the *Bucks County Courier Times* became the first plaintiff to win a guilty verdict in a hearing on the new open meetings law. The Levittown township manager was found guilty of being in direct violation of the law.

SOUTH DAKOTA

The state court judge presiding over the trial of American Indian Movement (AIM) leader Dennis Banks issued a gag order to the press that appeared to be in violation of several appellate court decisions around the country.

Judge Marshall Young, presiding over Banks's trial on six charges growing out of a Feb. 6, 1973, disturbance in Custer, S.D., issued the order on the first day of the trial, June 1.

The five-page order detailed security measures, listed rules of courtroom decorum, ordered the lawyers and Banks

not to talk to the press about the case, and ordered the press not to write about anything except what actually transpired in the courtroom.

Judge Young said he researched carefully and found that the order was not unconstitutional, and is "a rather standard form order used in many trials."

Appellate courts have said that it is unconstitutional to prohibit reporters from writing about what happens inside the courtroom, let alone what happens outside the court.

One of the greatest restrictions ordered said newsmen would not be able to interview the attorneys to determine the value or meaning of a particular witness's testimony.

TENNESSEE

Tennessee boasts what may be the strongest open meetings law in the nation. County officials and local school boards failed in attempts to weaken the law during the 1975 legislative session. Tennessee does not have an open records statute. And a new source protection law was adopted in 1973.

Dan Hicks Jr., editor of the *Monroe County Observer* of Madisonville, filed a $100,000 civil rights suit in U.S. District Court against County Judge J. P. Kennedy, a juvenile court judge who had Hicks jailed.

Hicks was charged with contempt of court for printing the name of a juvenile charged in a murder, after being ordered not to write anything about the case. He was fined $50 and ordered to spend five days in the county jail. He was released two hours later and the judge commented:

"Dan's wife has a heart ailment and that condition could be aggravated by Dan's being in jail. And I couldn't see that the juvenile court could be served to any advantage by his staying in jail."

Hicks, who has written about bootleg liquor and other controversial topics, has also been beaten twice, was once missed by a shotgun blast, was sued for libel and has had his plant burned out twice.

Tennessee's 1973 shield law has been upheld in its first constitutional test in a case involving the Nashville *Banner*. Chancery Court Judge Robert Hoffman ruled that *Banner* Editor Ken Morrell, reporter Larry Brinton and former reporter Ed Long do not have to disclose sources of stories about Robert L. Taylor, an unsuccessful candidate for the Tennessee Supreme Court. Taylor had sought to have the sources disclosed on the grounds that the information damaged his chances for the court post.

TEXAS

Since the enactment of open meetings and open records laws in 1973, the news media of Texas—notably the Austin *American-Statesman*—have made good use of them. The *Texas Monthly Reporter* had tagged the *American-Statesman* as "normally complacent," but Editor Nowland Nethaway cited 14 specific instances in which his newspaper had used the new statutes.

One instance in particular gained national attention because it involved the refusal of a federal judge to permit publication of the names of trial jurors. Supreme Court Justice Lewis F. Powell Jr. refused to set aside the order of the trial judge.

Powell made no comment in denying the application of the Austin *American-Statesman* for a stay of the order issued by U.S. District Judge Thomas D. Blackwell, of Austin. The newspaper's application contended the order was an unconstitutional prior restraint and that names of the jurors were news during the trial, not after it might be over. (The latter point being made because Judge Blackwell said the names could be printed when the trial ended.) Blackwell did release the names when the jury began its deliberations.

The newspaper's brief was supported by the Reporters Committee for Freedom of the Press which stressed that news reports are not history books to be distributed to the public when and if the judiciary approves. This stand, along with that of the newspaper, was also supported by counsel for the American Society of Newspaper Editors.

Judge Blackwell had ordered the news media to refrain from identifying

jurors during the trial of Robert Kleasen, 42, in the shooting death of Mark Fischer, a 19-year-old Mormon missionary from Milwaukee.

Meanwhile, names of the jurors who recently acquitted John Connally of bribery charges, which were kept secret during the trial, are still secret despite all efforts by the Reporters Committee for Freedom of the Press to have them released.

Chief Judge George L. Hart Jr. of the U.S. District Court, who ordered the names sealed, says candidly he knows of no legal precedent for his action and admits he hasn't looked for one.

The Reporters Committee asked Hart for the juror list on May 6, three weeks after the verdict. Hart rejected the request two days later. The purpose of his action, Hart said in a letter, was to prevent harassment of jurors "who had performed a valuable public service." Asked his authority for issuing the order, Judge Hart replied amiably: "Common sense."

The committee, in its letter to Hart, wrote that his order appears "to attempt to establish a secret jury system . . . and is a violation of the people's right to know about the criminal justice process under the First Amendment."

Judge Hart replied, "Your letter indicates that harassment of jurors is a penalty that every juror must undergo in order to serve. I do not believe that this should be so." The judge then added: "If you can give me some valid reason in the public interest why the jurors' names should be disclosed, I will be happy to reconsider."

The judge said his ruling was the outgrowth of many years of concern for the well-being of jurors. Over the years, he said, jurors have expressed much anxiety about harassment after their service is completed.

The student press lost a freedom fight in Texas. Late in 1974 the president of the University of Texas-Permian Basin in Odessa, ordered 1,300 copies of the campus paper shredded because of a critical letter the student editor allowed to be printed.

President B. H. Amsted said, "This is not a student newspaper. We consider it a house organ." But Joel Asbery, student editor of the four-page weekly, the *Windmill*, said, "I will not be a mouthpiece for the administration." He was fired.

The controversial letter was written by a senior government student who criticized the University of Texas Board of Regents for firing President Stephen H. Spurr of the University of Texas-Austin.

VIRGINIA

A Virginia state law prohibiting a newspaper from publishing an advertisement for legal out-of-state abortion services was struck down by the U.S. Supreme Court. The Court held the ad was protected by the First Amendment.

Jeffrey C. Bigelow, editor of the now defunct *Virginia Weekly*, an underground newspaper in Charlottesville, had been convicted of a misdemeanor for printing the advertisement. The Virginia law, adopted in 1878, has since been changed.

Judge Robert T. Armistead of the York County Circuit Court ruled that a private lunch meeting of three members of the board of supervisors violated the law. Although he termed the violation "insignificant," Armistead said it was "something the Supreme Court should pass on."

An amendment to the Virginia FOI law restricts access to penal records of persons in state prisons. The amendment would exempt from the law "all records of persons imprisoned in a penal institution in this state (provided such records relate to the same imprisonment)."

WASHINGTON

For the first time in the history of the State of Washington, still and television cameras photographed a Superior Court trial. The news media hope this will lead to the elimination of Canon 35 of the American Bar Association from the state's rules of court.

The project was experimental. Film and tape were not telecast nor the photographs published. Among the full-

time observers at the trial were Paul Conrad, executive director of the Allied Daily Newspapers of Washington, and Hu Blonk, a member of the FOI committees of the Associated Press Managing Editors and SPJ,SDX.

Washington has had an open meetings law since 1971 and an open records statute became effective in 1973. The state has no news source protection law.

The State Supreme Court ruled that school boards are permitted to hold executive sessions when they are performing a "quasi-judicial function."

The Lake Stevens School District met in secret session to discuss not renewing a teacher's contract. The teacher appealed the dismissal because the meeting had been closed to the public, in apparent violation of the state open meetings law.

A trial court upheld the school district. The State Supreme Court upheld the decision.

WEST VIRGINIA

Among the states with new freedom of information laws is West Virginia which enacted open meetings and open records statutes in 1975. It does not have a news source protection bill.

The Charleston *Daily Mail* brought action against the state treasurer demanding that he open to the public his bank investment records. The newspaper won this access case which resulted in a further investigation of state investments. The treasurer has since pleaded guilty to federal indictments of mail fraud, extortion and bribery.

WISCONSIN

Hearings at which witnesses may be afforded freedom from prosecution in exchange for their testimony were opened to the public by the Wisconsin Supreme Court.

Justice Roland B. Day, author of the unanimous opinion, said that however desirable secrecy may be in John Doe investigations into criminal activity, "Secrecy is not permissible when one of the witnesses may be granted immunity from prosecution entirely because of a refusal to testify on the ground of self-incrimination."

The decision resulted from an incident in which a reporter for the Milwaukee *Sentinel* was refused admission to an immunity hearing in connection with an inquiry into organized prostitution in Milwaukee.

In June, *Sentinel* reporter Mary Zahn learned that Circuit Judge Christ T. Seraphim had conducted immunity hearings in secret. An order restraining Seraphim from holding secret hearings was issued by Wisconsin Supreme Court Justice Horace W. Wilkie. The decision of the full court noted that "it is clear the policy is that the public ought to know who is given immunity from prosecution."

In Shawano, Wis., 80 newsmen were notified that their telephone conversations with members of the Menominee Warrior Society holding the Alexian brothers estate at Gresham in January were tapped by order of Judge Gordon Myse.

This was only one incident cited by reporters who covered the seizure. Reporters felt highly inhibited in their movements. At least 100 local and national reporters were on the scene at various times, but the main complaint of reporters was that they had to rely on press conferences for what they filed as news stories. "We're printing what we're told as opposed to what we perceive," said Stuart Wilk of the Milwaukee *Sentinel.*

THE RUNDOWN

The states without open records laws are: Delaware, Kentucky, Rhode Island.

States without open meetings laws: New York, Rhode Island.

States without shield laws: Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, North Carolina, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.